IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1268 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
RAJESHCHANDRA CHAMANLAL VORA - Opponent(s)

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Appearance :
MR IM PANDYA, ASST. PUBLIC PROSECUTOR for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,
MR MRUGEN K PUROHIT for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 03/07/2006

ORAL JUDGMENT

1. The appellant – State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure; 1973 challenging the judgment and order of acquittal dated 19th July,

2003 passed by the J.M.F.C., Jasdan, in Criminal Case No. 78 of 1993 acquitting the present respondent of charges of committing offence under Section 7(1) r.w. Section 16 of the Prevention of Food Adulteration Act; 1954 (hereinafter referred to as the 'PFA Act' for short).

2. This Court (Coram: Mr. Akil Kureshi, J.) issued notice on 7th April, 2006 calling upon the respondent to show cause as to why leave as prayed for should not be granted to prefer appeal against the impugned judgment of acquittal. In response to the notice, Shri Purohit appears on behalf of the respondent.

3. Heard learned counsel for the parties.

4. The brief facts giving rise to the appeal is to be narrated as under :-

The original complainant – Food Inspector while working at Rajkot, visited Jasdan, District Rajkot. On 7th September, 1992 at 13.15 hours, the Food Inspector visited Bharat Oil Industries situated at Station Road, Jasdan, in the presence of panch witnesses. The Food Inspector – complainant bought 600 gms of groundnut oil on payment of Rs.21.60 ps. This oil was purchased from the tank of oil containing about 2100 kgs of oil. The requisite notice was issued in Form

– 6 and receipt for payment of price for the sample food article – oil was collected. The oil was thereafter, divided into three equal parts and collected in three clean odourless glass bottles and they were sealed with air tight seal so as to prevent from any moisture getting into it. The bottles were, thereafter, affixed with the seal of authority concerned in accordance with law. The sample food article was on the next date i.e. on 8th September, 2002 sent to Public Analyst, Bhuj, for analysis. The specimen seal impression of the seal used was sent separately. The remaining two parts of the sample food article were handed over to the Local Health Authority, Rajkot, on the very same date i.e. on 8th September, 2002. On 9th September, 2002, the report of Public Analyst for sample No. 23/92 dated 16th November, 1992 was received. The report of the Public Analyst indicated that the sample food article was not in conformity with the standards laid down in the PFA Act and therefore, the vendor was required to be proceeded against for commission of offence under Section 7(1) r.w. Section 16 of the PFA Act. The requisite permission was obtained from the Local Health Authority for lodging the prosecution and ultimately, the complaint came to be lodged. The Notice under Section 13(2) came to be issued on 6th March, 1993 by the Local Health Authority informing the present respondent about his right to request

the Court for having the sample tested at the Central Food Laboratory. The trial Court, after recording the plea of denial, proceeded with the trial. The trial Court has acquitted the accused on the ground that the prosecution had failed to prove the case against the accused beyond doubt. The order dated 19th July, 2003 passed in Criminal Case No. 78 of 1993 is impugned in the present appeal.

5. The learned APP, Shri I.M.Pandya, has taken this Court through the record of Criminal Case No. 78 of 1993 and submitted that the trial Court has erred in acquitting the accused – present respondent. Shri Pandya has submitted that the report of the Public Analyst unequivocally indicates that the subject sample food article was adulterated inasmuch as it did not confirm to the standards laid down in the PFA Act. In light of this report, the order of acquittal was not justified at all. Shri Pandya has submitted that the Food Inspector in his deposition has unequivocally stated before the trial Court that the glass bottles used for collecting the sample were dry and clean and therefore, the trial Court ought not to have come to the conclusion that there was no compliance with the mandatory provisions of Rule – 14 of the PFA Rules. Mr. Pandya has submitted that the report also indicates that the sample collected was that of pure groundnut oil and therefore, when the

vendor had sold pure groundnut oil, the plea that it was not meant for sale or that it was collected during the process, ought not to have been accepted by the trial Court. Shri Pandya has submitted that as the order of acquittal is otherwise also errorneous and contrary to the provisions of law and the same deserves to be quashed and set aside and the accused deserves to be dealt with in accordance with law for committing serious offence under the PFA Act.

6. Shri Purohit, learned counsel, on behalf of the respondent has produced typed written copy of the deposition of the Food Inspector and drawn this Court's attention to the cross-examination of the Food Inspector, who is the complainant, wherein, he has stated that the sample of groundnut oil was collected while it was under process. He has also invited this Court's attention to the admission of the complainant – Food Inspector to the effect that the Food Inspector was not aware as to when the bottles used for collecting the sample food article were cleaned nor did he have any knowledge about the person, who cleaned it. He also admitted in his cross-examination that there was no procedure prescribed for cleaning the bottles at the office. Shri Purohit has heavily relied upon this admission on the part of the complainant – Food Inspector in support of his submission that there was breach of mandatory provisions of Rule

– 14 of the PFA Rules or at least, it can be said that the prosecution failed in proving due compliance with the provisions of Rule – 14 of the PFA Rules by not leading any positive cogent evidence. Time and again, this Court has observed that in absence of any cogent evidence coming forward on record about due compliance of Rule – 14 of the PFA Rules, the acquittal based upon such findings need not to be interfered with.

7. This Court has perused the documents produced by Shri Pandya on record of the Criminal Case No. 78 of 1993 and also the typed copy of the deposition of the Food Inspector – complainant produced by Shri Pandya. This Court has also perused the report of the Public Analyst. The following facts emerges from the reading of the record.

(i) The sample food article was collected from a oil Miller and he was alleged to have been processing and selling the oil.

(ii) The sample food article was collected from oil tanker, situated in the oil mill, which was containing total 2100 kgs of oil.

(iii) The 600 gms oil was collected through tap fixed in the tanker containing 2100 kgs of oil.

(iv) The oil in the first instance was collected in a vessel and thereafter, it was poured into the glass bottles.

(v) That the Food Inspector – original complainant has admitted in his deposition that he himself has not cleaned or dried the bottles.

(vi) The Food Inspector in his deposition has also admitted the fact that the bottles used for collecting the sample food article were received by him from the Office of the Local Health Authority.

(vii) The Food Inspector has also admitted in his cross-examination that the bottles used for collecting the sample food article were kept in the Office of the Local Health Authority and he has no knowledge as to whether they were cleaned even in the Office of the Local Health Authority or not.

(viii) The Food inspector – complainant has also admitted in his cross-examination that no procedure was prescribed for drying and/or cleaning the bottles at the Office of the Local Health Authority.

(ix) He has also admitted in his cross-examination that he is not aware of the fact

that which officer has signed the receipt at Exh.34.

(x) It has not come on record through any evidence of the prosecution that the vessel employed for collecting the sample through the tap is in the first instance clean or not.

(xi) The complainant has admitted in his cross-examination that the oil was collected when it was in process.

8. The aforesaid facts, which are not in dispute clearly raise doubt about the case of the prosecution that when only 600 gms of oil was collected from a huge tank containing 2100 kgs of oil, then, it was incumbent upon the Food Inspector to make out a positive case that the entire tank containing 2100 kgs of oil was meant for sale and, in fact, the vendor was selling that oil in that condition to others also. The suggestion that it was not meant for sale or that he was informed that it was yet to undergo one more process has been denied but the denial is also not firmed inasmuch as, he has merely stated that he is not aware and/or he was not informed that there is one more process to be undertaken for refining the oil in question.

9. In view of the aforesaid discussion, this Court is of the considered view that this being

acquittal appeal, the order of acquittal need not to be interfered with, unless and until, it is established by the appellant that the sustaining of order of acquittal would result into miscarriage of justice in absence of any such plea that there is a serious doubt about the oil sample being meant for sale. This Court has no hesitation in coming to the conclusion that the judgment and order of acquittal dated 19th July, 2003, impugned in the present appeal, does not call for interference and therefore, the leave to appeal deserves to be refused.

10. Accordingly, the leave to appeal is refused and the appeal stands rejected. Notice discharged.

(S.R.BRAHMBHATT, J.)

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